IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2173 OF 2006

Harishchandra Shankar Gangade)
Age: about 27 Years,)
Occupation: Agriculturist & Labourer,)
C/o.Guardian father at Pimpalgaon,)
Taluka Mokhada, District Thane.)...Appellant

Versus

1.Shri Vilas Bhaskar Barve,)
Residing at Shilapur, District Nashik.)

2.New India Assurance Co. Ltd,)
Shivkrupa, Gokhale Road, Naupada,)
Thane.).Respondents

Shri S.S.Bhise for the Appellant.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 07, 2007.

JUDGMENT:

1. Heard Advocate appearing for the Appellant. Notice for final disposal has been already issued. Office noting shows that both the Respondents are duly served and are represented by Advocates. None appears for the Respondents.

2. The Appellant is the claimant in a Claim Petition for compensation filed under the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal at

Thane. By Judgment and Order dated 14th August, 2001 the learned Member dismissed the Claim Petition. While dismissing the Claim Petition, the learned Member observed that the Advocate for the Appellant was absent continuously except on few dates. The learned Member has noted that even the Advocate for the second Respondent was absent. The Claim Petition has been dismissed on the ground that the Appellant has failed to lead any evidence. Application for restoration was made on the same day which has been dismissed by order dated 30th August, 2001.

3. After having heard the learned Advocate for the Appellant, I find that a case for restoration of the Claim Petition is made out. The learned Member of the Tribunal in the impugned Judgment and Order has recorded that the Advocate for the Appellant was consistently absent. The Appellant is a labourer as disclosed from the cause title of the Claim Petition. There is nothing on record to show that the Advocate for the Appellant had informed the Appellant about the dates fixed in the Claim Petition. This is not a case where inspite of having knowledge of the dates fixed, the Appellant remained absent. The claim of the Appellant is based on

his alleged permanent disablement. In my view, one chance deserves to be granted to the Appellant to prosecute the claim.

4. Hence, I pass following order:

(i) The impugned Judgment and Award dated 14th August, 2001 is quashed and set aside.

(ii) The M.A.C.Application No.467 of 1990 is restored to the file of the learned Member of the Motor Accident Claims Tribunal at Thane.

(iii) The learned Member of the Motor Accident Claims Tribunal will decide the Claim Petition afresh after notice of all concerned parties.

(iv) The Claim Petition shall be decided as expeditiously as possible and preferably on or before 31st December, 2007.

(v) No order as to costs.

(vi) Writ to be sent immediately.

JUDGE